

UNEMPLOYMENT COMPENSATION
BOARD OF REVIEW
Department of Labor and Industry
Commonwealth of Pennsylvania

UC-59 REV 5-09



APPEAL NUMBER 12-09-B-2069
DATE MAILED 4/26/2012
FINAL DATE TO
APPEAL 5/11/2012
SSN

REFEREE'S DECISION/ORDER

CLAIMANT

EMPLOYER

TODD M FERRYMAN

INTEGRITY STAFFING SOLUTIONS
750 SHIPYARD DRIVE STE 300
WILMINGTON DE 19802

CLAIM:

FILED: 6/20/2010
DETERMINATION/S ISSUED: 2/27/2012 BY: ALLENTOWN UC SERVICE CENTER
CLAIMANT DETERMINED UNDER UC LAW: Ineligible 402(b), 804(a), 402(e)
FOR WAITING WEEK ENDING:
FOR COMPENSABLE WEEK/S ENDING: 5/28/2011

APPEAL:

FILED: 3/13/2012 BY: Claimant
HEARING FIELD: 4/25/2012 IN: BETHLEHEM, PA
ATTENDED BY: Claimant, Employer

ENCLOSURE: A translation document UC-1627 is enclosed with this notice.**FINDINGS OF FACT:**

1. The claimant was employed full time as a picker by Integrity Staffing Solutions from November 8, 2010 until March 4, 2011 with a final rate of pay of \$12.25 per hour.
2. On March 4, 2011 the claimant sustained a non work related injury.
3. On March 7, 2011 the claimant notified the employer of his limitations which did not allow him to perform work.
4. The employer was unable to provide work within the claimant's restrictions.
5. The employer informed the claimant he would be able to reapply for work once he was able to perform full duty.
6. In May of 2011 the claimant was able and available for full duty work.
7. The employer did not have work for him at that time.

ISSUE: Did the claimant have necessitous and compelling reason and exhaust all options prior to separating from employment?

Did the claimant receive unemployment compensation benefits for weeks in which he was not entitled?

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Claimant — TODD M FERRYMAN

Appeal — 12-09-B-2069

REASONING: Section 402(b) of the Law provides that a claimant shall be ineligible for compensation for any week in which claimant's unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature. Since the claimant voluntarily terminated the employment, the burden rests upon the claimant to show cause of a necessitous and compelling nature for so doing.

The Pennsylvania Courts have held that a claimant does not have to be advised by a doctor to quit in order to remain eligible for benefits. Neither does the claimant have the burden of asking for a transfer nor another type of work once the employer has been informed of the health issue. The claimant is required to establish a health issue, to inform the employer of the specific issue, to allow the employer an opportunity to accommodate the problem, then to be available for whatever suitable accommodation may be offered by the employer in light of the health issue.

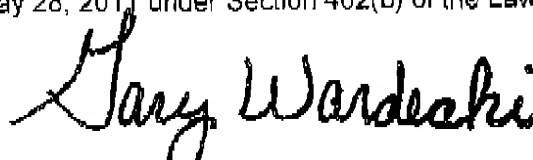
The competent testimony from both parties in this case is that the claimant notified the employer of his health restrictions. The employer had no light duty work available for the claimant. The claimant has met his burden. Benefits must be allowed under Section 402(b) of the Law.

The claimant was able and available for work prior to applying for unemployment compensation benefits. Section 401(d)(1) is not at issue in this case.

Section 804(a) of the Law provides that any person who by reason of the individual's fault has received any sum as compensation under this Act to which that individual was not entitled, shall be liable to repay to the Unemployment Compensation Fund to the credit of the Compensation Account a sum equal to the amount received by that individual.

The claimant is found eligible for benefits under Section 402(b) of the Law. Therefore no overpayment can be assessed under Section 804(a) of the Law.

ORDER: The determination of the Unemployment Compensation Service Center is **REVERSED**. Benefits are **ALLOWED** for compensable week ending May 28, 2011 under Section 402(b) of the Law.



Gary Wardecki, Referee

mc - 9110

Pursuant to the provisions of the Law, the above decision shall become final on the date it was mailed to the parties, unless any aggrieved party files a further appeal to the Pennsylvania Unemployment Compensation Board of Review within the fifteen (15) day appeal period.

The last date to file an appeal to this decision is 5/11/2012.

IF YOU WISH TO FILE A FURTHER APPEAL

You have the right to file a further appeal to this decision within fifteen (15) days of the date of mailing. Your appeal must include the following information: ► your name; ► the claimant's name and social security number; ► the date of the decision being appealed; ► the reason for appeal; ► the appeal number; ► your address. Under the provisions of Act 5 of 2005, you may file your own appeal, or your appeal may be filed by an attorney or by any other advocate of your choice.

You may file your appeal by mail. If you file your appeal by mail, the appeal is filed as of the date of the U.S. Postal Service postmark or a U.S. Postal Service form 3817 (Certificate of Mailing) or a U.S. Postal Service certified mail receipt. If there is no U.S. Postal Service postmark, the date of filing will be the date of a postage meter mark on the envelope containing the appeal. If the appeal contains neither a postmark nor a postage